



2008 SEP 10 PM 4:46 PATENT
ATTORNEY DOCKET NO. 06132/075002

Certificate of Mailing: Date of Deposit: September 5, 2008

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Katherine Johnson

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

SEP 15 2008

Applicant: Arroyo et al.

Confirmation No.: 5599

OFFICE OF PETITIONS

Serial No.: 10/715,868

Art Unit: 1648

Filed: November 17, 2003

Examiner: Mary Mosher

Customer No.: 21559

Title: West Nile Virus Vaccine

09/11/2008 DALLEN 00000002 10715868

01 FC:1461

740.00 OP

02 FC:2801

405.00 OP

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION TO WITHDRAW NOTICE OF ABANDONMENT

Under 37 C.F.R. § 1.181, Applicants hereby petition to have the Notice of Abandonment that was mailed in connection with the above-captioned case on August 22, 2008 withdrawn. A copy of the Notice is enclosed. According to the Notice, the application was abandoned for Applicants' failure to timely pay the required issue fee and publication fee within the statutory period of three months from the mailing date of the Notice of Allowance (April 24, 2008). However, as explained below, a submission was timely filed on July 22, 2008.

The undersigned, Applicants' attorney of record, first became aware of the abandonment on August 22, 2008, upon receipt of the Notice of Abandonment and submits that this petition to withdraw the Notice is being promptly submitted as required by 37 C.F.R. § 1.181(f).

The following documents are submitted as proof that a reply was timely filed on July 22, 2008. The submitted copies of these documents are true copies of those prior submitted or otherwise connected with this matter:

1. A copy of the Reply to Notice of Allowance, including an executed certificate of mailing dated July 22, 2008.
2. A copy of accompanying papers submitted with the Reply to Notice of Allowance, including a Statement of Large Entity Status and Issue Fee Transmittal, each of which are dated July 22, 2008.
3. A copy of a check dated July 22 and postcard dated July 22, 2008 that were included with the Reply to Notice of Allowance. (Note: the number of pages of the Statement of Large Entity Status was corrected after the copy of the postcard was made, but prior to submission.)
4. A copy of the postcard that was stamped as having been received by the PTO Mailroom on July 24, 2008.
5. A copy of our firm's mailing log for July 22, 2008, which indicates that the package was checked by docketing staff, handed to mailroom staff for delivery to the Post Office, and delivered to the Post Office on July 22, 2008. (The log has been redacted to remove reference to other items being filed on that day.)

Applicants submit that the Reply was timely filed and request that the Notice of Abandonment be withdrawn.

Applicants further request that the Reply to Notice of Allowance and issue fee payment be processed, so that the application may proceed to issuance.

Enclosed is a new check for \$740 to cover the fees believed to be due, in view of Applicants' prior submission of an issue fee payment and related fees on January 17, 2007. The total fee required now is \$1770, which includes an issue fee payment for a large entity as required by 37 C.F.R. § 1.18(a) of \$1440, a publication fee of \$300, and a patent copy fee required by 37 C.F.R. § 1.19(a)(1)(i) of \$30.00 for ten patent copies. With the January 17, 2007 submission, Applicants paid \$1030. The difference between \$1770 and \$1030 is \$740, the amount now paid.

Applicants note that a pre-grant publication issued in this case on November 29, 2007. As discussed in their submission dated February 19, 2008, Applicants did not request this pre-grant publication and question whether this publication may have taken place due to the prior payment of a publication fee, with the prior submitted issue fee. If this is the case, then Applicants respectfully submit that they should not be required to pay the publication fee again. However, reference is made to the deposit account of Applicants' representative, if this has been misunderstood.

Applicants also submit herewith a check for \$405 to supplement the payment for the Request for Continued Examination filed on March 26, 2008. The fee paid previously was \$405 and Applicants' representative has since learned that large entity fees should have been paid at that time, as stated in the enclosed Statement of Large Entity Status. The error was made without deceptive intent and the current payment ensures that all fees due in this case have been paid at the correct level.

Although no additional fees are believed to be due, if there are any additional charges required (e.g., for withdrawal of abandonment and proceeding with issuance) or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: September 5, 2008

Susan M. Michaud
Susan M. Michaud, Ph.D.
Reg. No. 42,885

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Telephone: 617-428-0200
Facsimile: 617-428-7045



PATENT
ATTORNEY DOCKET NO. 06132/075002

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Katherine Johnson
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Signature of person mailing correspondence

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SEP 15 2008

Applicant:	Arroyo et al.	Confirmation No.:	5599
Serial No.:	10/715,868	Art Unit:	1648
Filed:	November 17, 2003	Examiner:	Mary Mosher
Customer No.:	21559		
Title:	West Nile Virus Vaccine		

OFFICE OF PETITIONS

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW NOTICE OF ABANDONMENT

ATTORNEY DECLARATION

I, Susan M. Michaud, declare as follows:

I am a partner in the law firm of Clark & Elbing LLP and an attorney of record in the above-captioned case.

I first became aware of the abandonment of the above-captioned application on August 22, 2008, upon receipt of a Notice of Abandonment. I submit that the accompanying Petition to Withdraw the Notification is being promptly submitted as required by 37 C.F.R. § 1.181(f).

On July 22, 2008, I reviewed and signed correspondence entitled Reply to Notice of Allowance, Statement of Large Entity Status, and Issue Fee Transmittal, which each included a

certificate of mailing printed directly on the correspondence, indicating that the correspondence, accompanying postcard, and check were being deposited with the United States Postal Service on July 22, 2008. The documents were prepared by my assistant, who made photocopies for the file (the number of pages of the Statement of Large Entity Status was corrected on the postcard after the copy of the postcard was made). The originals were checked by our docketing staff and sealed in an envelope preprinted with the address of the Commissioner for Patents, which was handed to our staff member who delivers such materials to the United States Post Office, in accordance with our standard office procedures. A copy of the mailing log establishing that the correspondence was mailed for this application is attached (see the item labeled with client/matter number 06132/075002; the log has been redacted to remove reference to other items filed that day).

Knowing the procedures for outgoing mail and the experience of our staff with them, I had reasonable basis to expect that the correspondence would be deposited with the United States Postal Service on the date indicated. Having received the stamped postcard back from the Patent Office indicates that the material was properly and timely submitted.

All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully submitted,

Date: September 5, 2008

Susan M. Michaud
Susan M. Michaud, Ph.D.
Reg. No. 42,885

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CLARK & ELBING

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,868	11/17/2003	Juan Arroyo	06132/075002	5599
CLARK & ELBING LLP 101 FEDERAL STREET BOSTON, MA 02110			EXAMINER MOSHER, MARY	
ACTION DUE <u>Withdraw/Revised</u> DUE DATE <u>10-22-08/8-22-09</u> INITIALS <u>LKB TM</u>			ART UNIT 1648	
			PAPER NUMBER	
			NOTIFICATION DATE 08/22/2008	
			DELIVERY MODE ELECTRONIC	

Notice of Abandonment

This application is abandoned in view of:

1. ☐ The applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission date _____), which is after the expiration of the period for reply (including a total extension of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of:
 - (1) a timely filed amendment which places the application in condition for allowance;
 - (2) a timely filed Notice of Appeal (with appeal fee);
 - (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box e below).
 - (d) ☐ No reply has been received.
2. ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission date _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee required by 37 CFR 1.18 is \$ _____.
The publication fee, if required by 37 CFR 1.18(d), is \$ _____.
 - (c) ☒ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawing have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

Petitions to revive under 37 CFR 1.137(a) or (b), or request to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Patent Publication Branch
Office of Data Management